



San Juan Unified School District
Technology Services Administration
 3738 Walnut Avenue, Carmichael, California 95608
 P.O. Box 477, Carmichael, California 95609-0477
 Telephone (916) 971-7808; FAX (916) 971-7388

Dr. Pat Jaurequi, Superintendent of Schools
 Oswaldo Galarza, Director

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
 WASHINGTON, D.C. 20554**

Received & Inspected

In the matter of)
)
 Request for Waiver by)
)
 San Juan Unified School District (SJUSD))
)
 Schools and Libraries Universal Service)
 Support Mechanism)
)

MAR 17 2010
 FCC Mail Room

CC Docket No. 02-06

REQUEST FOR REVIEW

Funding year 2006 (7/1/2006 to 6/30/2007)
 Billed Entity Name: San Juan Unified School District
 Billed Entity Number: 144543
 FCC Registration Number: 0012035978
 Form 471 Application Number: 510946
 Funding Request Numbers: 1405168 (Wan-Lan Solutions, Inc.)
 1405289 (Cross Telecom Corporation)

I. Introduction and Background

San Juan Unified School District (SJUSD) respectfully requests a review of the Notification of Commitment Adjustment Letters issued by the Universal Service Administrative Company (USAC) and dated January 18, 2010.^a

SJUSD, which participates in the Universal Service Support Mechanism for Schools and Libraries (known as "the E-rate program") is a California school district. For Funding Year 2006, SJUSD posted FCC Form 470 (Number 685930000573452) indicating it was seeking "[s]ervices for which a new written contract is sought..." for the Internal Connections category. Under Internal Connections, it also indicated that it had released or intended to release a Request for Proposals (RFP), which would be available on the Web at the district's site (www.sanjuan.edu).

Copies rec'd 0
 JDE

^a There are actually two letters, both dated January 18, 2010. Since the reason for rescinding each Funding Request Number is the same, and arises from the same circumstances, the appellant respectfully requests that both letters be reviewed at the same time. Copies of both letters are attached.

In December of 2008, SJUSD was notified that it had been selected for a beneficiary audit to be conducted by KPMG.^b As a result of the audit, USAC issued the two Notification of Commitment Adjustment Letters which are the subject of this Request for Review.

The Schools and Libraries Division (SLD) of USAC determined that the funding commitment on each of the subject Funding Request Number (FRN) must be rescinded in full, because SJUSD "did not advertise the two related Request for Proposals (RFP) (i.e., RFP 06155 and 06153) in a local publication, which is required by the Beneficiarys [sic] Bidding Policies and Procedures and the California Public Contract Code."

Given the totality of circumstances surrounding the filing of the underlying SJUSD Form 470, which was the basis for both cited funding requests, we believe that USAC erred in making that determination.

II. Discussion

In accordance with SLD requirements, applicants must file the *Description of Services Requested and Certification Form* (Form 470) in order to begin the competitive process. Applicants must also ensure a fair and open competitive procurement process.

By filing the Form 470, SJUSD did in fact begin the competitive process. In addition to indicating on the SLD website that a Request for Proposal would be posted, SJUSD also posted the RFPs on its own website. Thus, SJUSD gave constructive notice to and effectively reached all qualified bidders.

Although all qualified potential bidders were reached through the District's posting on the SLD's website, advertisement in a publication of general circulation serves two additional purposes: to give notice to unqualified potential bidders who may desire to acquire the qualifications required to bid on the project, and to give notice to the general public that its local public government or agency is initiating a procurement process on its behalf, so as to render this process public and open.

We believe these two purposes were met by advertising both RFPs on the District's website. The District's website is public and is commonly known throughout the general public and the community of service providers within the District's area; and though it is not a newspaper of general circulation, it is nevertheless a **publication of general circulation**. Advertising a Request for Proposals on the District's website has at least the same publicizing effect as a notice in a local newspaper. In fact, we would argue that it has a greater publicizing effect.

We recognize that an omission did take place in the procurement process for Requests for Proposals 06-155 and 06-153, and that these RFPs were not advertised in a newspaper of general circulation as called for by the California Public Contract Code

^b Please see attached letter from KPMG.

and District policies. However, it is our belief that this omission did not lead to a defect in the competitive bidding process, and that, despite the omission, the District still substantially complied with the California Public Contract Code (PCC) and its own rules.

In its opening article to the Public Contract Code, the legislature states: "PCC 100: [...] it is the intent of the Legislature in enacting this code to achieve the following objectives:

- (a) To clarify the law with respect to competitive bidding requirements.
- (b) To ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds.
- (c) To provide all qualified bidders with a fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound fiscal practices.
- (d) To eliminate favoritism, fraud, and corruption in the awarding of public contracts."

We believe that the integrity of the procurement process was not compromised by a mere technical deficiency, and that consequently, the outcome of the competitive bidding process was not affected and contained no defect, as is evidenced by the large number of responses to the Request for Proposals that were received.

We believe that the process as it occurred was in substantial compliance with the intent of the State regulations: it was fair, competitive, public, available to all qualified bidders, and provided the district with the lowest bid from a responsive responsible bidder.

Though the outcome of the competitive bidding process was not negatively affected, we fully recognize that a technical deficiency did take place and must be addressed. San Juan Unified School District has already strengthened its internal controls to prevent future occurrences of such omission. The District is committed to continue its systematic competitive bidding procedures, including formal compliance checklists; the designation of control positions, such that specific employees are responsible for verifying the completeness of the process and its compliance with rules and regulations, and to re-train all employees who participate in this process.

III. Prayer for Relief

We respectfully seek review of the determination leading to the issuance of the Notification of Commitment Adjustment Letters and ask that the entire set of circumstances surrounding the Form 470 (including the publication of the RFPs on SJUSD's own website) be taken into consideration in deciding whether SJUSD in fact violated any FCC guidelines.

Alternative Waiver Request

In the alternative, if the publication on the SJUSD website cannot be interpreted as a "publication of general circulation" then we respectfully ask that the requirement for such publication be waived.

Given the facts and circumstances described above, waiver would better serve the public interest than strict adherence to the general rule. *See Northeast Cellular*, 897 F.2d at 1166. There is no evidence of waste, fraud, abuse or misuse of funds. However, the rescission of funding will inflict undue hardship on SJUSD and the students it serves. *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, ¶ 11 (rel. May 19, 2006). Additionally, strict compliance with the rule would not further the purpose of 47 U.S.C. § 254(h), which directs the Federal Communications Commission to "enhance . . . access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers and libraries."

Therefore, we respectfully request that the Notification of Commitment Adjustment be overturned with respect to both Funding Request Numbers cited above.

Sincerely,

A handwritten signature in black ink, appearing to read "Pat Jauregui". The signature is fluid and cursive, with a large, stylized "J" and "G".

Dr. Pat Jauregui
Superintendent of Schools

Attachments

Oswaldo Galarza
SAN JUAN UNIFIED SCHOOL DIST
3738 WALNUT AVE
CARMICHAEL, CA 95608



Notification of Commitment Adjustment Letter

Funding Year 2006: July 1, 2006 - June 30, 2007

January 18, 2010

Darin Peets

SAN JUAN UNIFIED SCHOOL DIST

3738 WALNUT AVE

CARMICHAEL, CA 95608

Re: Form 471 Application Number:	510946
Funding Year:	2006
Applicant's Form Identifier:	Yr9 Int S-V-P-POE
Billed Entity Number:	144543
FCC Registration Number:	0012035978
SPIN:	143026279
Service Provider Name:	Cross Telecom Corporation
Service Provider Contact Person:	Becky Schletz

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

TO APPEAL THIS DECISION:

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
 - Billed Entity Name,
 - Form 471 Application Number,
 - Billed Entity Number, and
 - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
100 S. Jefferson Rd.
P. O. Box 902
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: Becky Schletz
Cross Telecom Corporation

**Funding Commitment Adjustment Report for
Form 471 Application Number: 510946**

Funding Request Number:	1405289
Services Ordered:	INTERNAL CONNECTIONS
SPIN:	143026279
Service Provider Name:	Cross Telecom Corporation
Contract Number:	C
Billing Account Number:	
Site Identifier:	144543
Original Funding Commitment:	\$6,613.43
Commitment Adjustment Amount:	\$6,613.43
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$6,613.43
Funds to be Recovered from Applicant:	\$6,613.43

Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. On your FY 2006 FCC Form 470 you certified that all bids received would be carefully considered and that the bid selected would be for the most cost-effective service or equipment offering. You certified that you reviewed and complied with all FCC, state and local procurement/competitive bidding requirements. During the course of an audit it was determined that you did not advertise the two related Request For Proposals (RFP) (i.e., RFP 06155 and 06153) in a local publication, which is required by the Beneficiarys Bidding Policies and Procedures and the California Public Contract Code. The FCC rules require that the applicant submits a bona fide request for services by conducting internal assessments of the components necessary to use effectively the discounted services they order, submitting a complete description of services they seek so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury. Since you prevented the potential bidders from formulating their bids and/or failed to comply with local and state procurement laws you violated the competitive bidding process. Accordingly, your funding commitment will be rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.

Oswaldo Galarza
SAN JUAN UNIFIED SCHOOL DIST
3738 WALNUT AVE
CARMICHAEL, CA 95608



Notification of Commitment Adjustment Letter

Funding Year 2006: July 1, 2006 - June 30, 2007

January 18, 2010

Darin Peets

SAN JUAN UNIFIED SCHOOL DIST

3738 WALNUT AVE

CARMICHAEL, CA 95608

Re: Form 471 Application Number:	510946
Funding Year:	2006
Applicant's Form Identifier:	Yr9 Int S-V-P-POE
Billed Entity Number:	144543
FCC Registration Number:	0012035978
SPIN:	143009797
Service Provider Name:	Wan-Lan Solutions, Inc.
Service Provider Contact Person:	Laurie Neal

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Schools and Libraries Division
Universal Services Administrative Company

cc: Laurie Neal
Wan-Lan Solutions, Inc.

**Funding Commitment Adjustment Report for
Form 471 Application Number: 510946**

Funding Request Number:	1405168
Services Ordered:	INTERNAL CONNECTIONS
SPIN:	143009797
Service Provider Name:	Wan-Lan Solutions, Inc.
Contract Number:	C
Billing Account Number:	
Site Identifier:	144543
Original Funding Commitment:	\$42,112.58
Commitment Adjustment Amount:	\$42,112.58
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$31,174.55
Funds to be Recovered from Applicant:	\$31,174.55

Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. On your FY 2006 FCC Form 470 you certified that all bids received would be carefully considered and that the bid selected would be for the most cost-effective service or equipment offering. You certified that you reviewed and complied with all FCC, state and local procurement/competitive bidding requirements. During the course of an audit it was determined that you did not advertise the two related Request For Proposals (RFP) (i.e., RFP 06155 and 06153) in a local publication, which is required by the Beneficiarys Bidding Policies and Procedures and the California Public Contract Code. The FCC rules require that the applicant submits a bona fide request for services by conducting internal assessments of the components necessary to use effectively the discounted services they order, submitting a complete description of services they seek so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury. Since you prevented the potential bidders from formulating their bids and/or failed to comply with local and state procurement laws you violated the competitive bidding process. Accordingly, your funding commitment will be rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.

Funding Request Number: 1405194
Services Ordered: INTERNAL CONNECTIONS
SPIN: 143009797
Service Provider Name: Wan-Lan Solutions, Inc.
Contract Number: C
Billing Account Number:
Site Identifier: 144543
Original Funding Commitment: \$54,378.92
Commitment Adjustment Amount: \$54,378.92
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date \$40,666.47
Funds to be Recovered from Applicant: \$40,666.47

Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. On your FY 2006 FCC Form 470 you certified that all bids received would be carefully considered and that the bid selected would be for the most cost-effective service or equipment offering. You certified that you reviewed and complied with all FCC, state and local procurement/competitive bidding requirements. During the course of an audit it was determined that you did not advertise the two related Request For Proposals (RFP) (i.e., RFP 06155 and 06153) in a local publication, which is required by the Beneficiarys Bidding Policies and Procedures and the California Public Contract Code. The FCC rules require that the applicant submit a bona fide request for services by conducting internal assessments of the components necessary to use effectively the discounted services they order, submitting a complete description of services they seek so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury. Since you prevented the potential bidders from formulating their bids and/or failed to comply with local and state procurement laws you violated the competitive bidding process. Accordingly, your funding commitment will be rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.